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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
WALKER RIVER PAIUTE TRIBE,)
)
Plaintiff-Intervenor,)
vs.)
)
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
)
Defendants.)

IN EQUITY NO. C-125-ECR-WGC
Subproceeding: C-125-C

3:73-CV-00128-ECR-WGC

**MINERAL COUNTY REPORT
CONCERNING STATUS AND
COMPLETION OF SERVICE**

MINERAL COUNTY,)
)
Proposed-Plaintiff-Intervenor,)
vs.)
)
WALKER RIVER IRRIGATION DISTRICT)
a corporation, et al.)
)
Proposed Defendants.)

Mineral County, Nevada, by and through its counsel of record, Simeon Herskovits of
Advocates for Community and Environment, and Sean Rowe, designated resident counsel, and

Mineral County Report Concerning Status and Completion of Service
Page 1 of 9

pursuant to the Minutes of the Court dated May 9, 2012 (Doc. No. 594), hereby submits the following Report Concerning Status and Completion of Service which includes a final service list, attached hereto as Exhibit A, an updated caption, attached hereto as Exhibit B, a service package, attached hereto as Exhibit C, and a Proposed Order Relating to Completion of Service, attached hereto. Exhibits A, B, and C and the Proposed Order reflect the directions and requirements of all the Court's orders relating to service. Once the Court issues an order approving Mineral County's service package, Mineral County intends to take the necessary steps to complete Rule 4 service on the remaining list of unserved proposed defendants in this case without delay.

I. BACKGROUND:

On October 25, 1994, Mineral County filed a Notice of Motion and Motion for Intervention, and Proposed Petition to Intervene in the C-125-B case. (C-125-B Doc. Nos. 31 & 32; C-125-C Doc. Nos. 2 & 3). On January 3, 1995, the Court created subfile C-125-C, or 3:73-CV-128-ECR-RAM. Minutes of the Court, at 1 (C-125-C Doc. No. 1).¹ On February 9, 1995, the Court ordered Mineral County to file revised Intervention Documents and to serve these Intervention Documents on all claimants to the waters of the Walker River and its tributaries pursuant to Federal Rule of Civil Procedure 4. Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County, ¶¶ 2, 3 (Doc. No. 19). Mineral County filed its Amended Complaint in Intervention, (Doc. No. 20), Amended Memorandum of Points and Authorities in Support of Mineral County's Amended Complaint in Intervention, (Doc. No. 21), and Motion for Preliminary Injunction; Memorandum of Points and Authorities; Affidavit of Kelvin J. Buchanan; and Affidavit of Gary L. Vinyard, Ph.D, (Doc. No.

¹ Unless otherwise noted, all document references are to C-125-C documents.

22), on March 10, 1995. On September 29, 1995, the Court clarified the February 9 Order and the set of documents that Mineral County was required to serve on claimants to the waters of the Walker River and its tributaries. Order, at 2 (Doc. No. 48). Over the ensuing years Mineral County completed service on the vast majority of proposed defendants.

On August 29, 2008, Mineral County filed a service report indicating that service is close to complete and requesting that the Court confirm the caption submitted by Mineral County, amend certain names in the caption, strike certain names from the caption, and substitute other names in their stead, ratify service efforts for several proposed defendants, and clarify the status of service on several proposed defendants. Mineral County Report Concerning Status of Service on Proposed Defendants (Doc. No. 479). On September 27, 2011, Magistrate Judge Leavitt issued an Order Concerning Service Issues in C-125-C (Doc. No. 547), which granted the requests made in Mineral County's August 2008 Service Report and confirmed the caption as it existed at that time, made corrections to the caption as requested by Mineral County, granted Mineral County's requests to dismiss certain parties, granted Mineral County's requests to substitute parties, ratified service on other parties as requested by Mineral County, and confirmed a list of parties who remain to be served. The Walker River Irrigation District ("WRID") filed objections to that Order (Doc. Nos. 552 & 553) and Mineral County responded (Doc. No. 563). The Court overruled WRID's objections in its April 23, 2012 Order with the exception of WRID's objection to the dismissal of Michael Sherlock, who will remain in the caption and must be served pursuant to Fed. R. Civ. P. 4. Order, at 22-27 (Doc. No. 592).²

² As the Court noted, in its April 23, 2012, Order, Mineral County already had agreed that Michael Sherlock should not be dismissed and will be served.

1 **II. COMPLETION OF SERVICE:**

2 Mineral County is now in a position to move forward on final service efforts in C-125-C,
3 and the Court has approved a final service list of 107 individuals and entities, which is attached
4 hereto as Exhibit A. *See* Order Concerning Service Issues in C-125-C, at 2 (Doc. No. 547);
5 April 23, 2012 Order, at 25-27 (Doc. No. 592). This final service list represents the final list of
6 proposed defendants to be served pursuant to Rule 4 and consists of Mineral County's Exhibit 6
7 to its January 23, 2009 Service Report Reply (Doc. No. 496), which was confirmed as accurate
8 by the Court's September 27, 2011 Order Concerning Service Issues in C-125-C (Doc. No. 547),
9 with the addition of Michael Sherlock pursuant to the Court's Order of April 23, 2012 (Doc. No.
10 592). Mineral County requests that the Court confirm this list as the final Rule 4 service list.

11
12 Pursuant to the Court's orders of September 27, 2011 and April 23, 2012, (Doc. Nos. 547
13 & 592), Mineral County also has attached to this Report as Exhibit B an updated caption that
14 reflects all orders of the Court to date, which added and/or dismissed parties. This caption
15 reflects the caption confirmed by the Court's Order of September 27, 2011 (Doc. No. 547), and
16 the additions and deletions to the caption that were approved in that order, with the exception of
17 Michael Sherlock, who has been kept in the caption pursuant to the Court's Order of April 23,
18 2012 (Doc. No. 592). Mineral County requests that the Court approve this caption as accurate
19 and current.

20
21 Pursuant to and consistent with the orders of the Court governing service to date, the
22 updated service package contains the following documents, which are attached hereto as Exhibit
23 C, with the exception of Mineral County's Intervention Documents listed under number 8 below,
24 which already are on file with the Court and are referenced by the Court's Document Numbers:
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26
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- 1 1. Notice of Lawsuit and Request for Waiver of Personal Service of Notice in Lieu of
2 Summons that is consistent with the request for waiver used in Mineral County's
3 previous service efforts, with the Notice used by the United States in subproceeding
4 C-125-B, with all orders of the Court to date, and with Form 5 of the Federal Rules of
5 Civil Procedure (Exhibit C-1);
- 6 2. Waiver of Personal Service of Notice in Lieu of Summons form that is consistent
7 with the waiver used in Mineral County's previous service efforts, with the Notice
8 used by the United States in subproceeding C-125-B, with all orders of the Court to
9 date, and with Form 6 of the Federal Rules of Civil Procedure (Exhibit C-2);
- 10 3. Notice in Lieu of Summons updated to reflect all orders of the Court to date, which is
11 based on and consistent with the Notice in Lieu of Summons document attached to
12 the Court's April 3, 2000 Order Concerning Status of Service on Defendants (Doc.
13 No. 327), which is the most recent Notice in Lieu of Summons approved by the
14 Court. The Notice in Lieu of Summons has been updated to reflect the provisions
15 governing successors-in-interest to served defendants contained in the Court's
16 September 6, 2011 Amended Order Concerning Service Issues Pertaining to
17 Defendants Who Have Been Served (Doc. No. 542), which were confirmed by the
18 Court's April 23, 2012 Order (Doc. No. 592). It also is consistent with the Notice in
19 Lieu of Summons used by the United States in C-125-B (Exhibit C-3);
- 20 4. Notice of Appearance and Intent to Participate form, which is based on and consistent
21 with the Notice of Appearance form attached to the Court's April 4, 2000
22 Amendment to Order Concerning Status of Service on Defendants (Doc. No. 328),
23 which is the most recent form approved by the Court (Exhibit C-4);

- 1 5. Disclaimer of Interest form, which was approved by the Court in its September 6,
2 2011 Amended Order Concerning Service Issues Pertaining to Defendants Who Have
3 Been Served (Doc. No. 542), which was confirmed by the Court's April 23, 2012
4 Order (Doc. No. 592) (Exhibit C-5);
- 5 6. Joint Motion for Substitution of Parties Following Transfer of Interest form, which
6 was approved by the Court in its September 6, 2011 Amended Order Concerning
7 Service Issues Pertaining to Defendants Who Have Been Served (Doc. No. 542),
8 which was confirmed by the Court's April 23, 2012 Order (Doc. No. 592) (Exhibit C-
9 6);
- 10 7. Statement Noting Death form, which is consistent with Form 9 of the Federal Rules
11 of Civil Procedure, and with the Court's September 6, 2011 Amended Order
12 Concerning Service Issues Pertaining to Defendants Who Have Been Served (Doc.
13 No. 542), which was confirmed by the Court's April 23, 2012 Order (Doc. No. 592)
14 (Exhibit C-7); and
- 15 8. Mineral County's Intervention Documents, which consist of the following
16 documents:
 - 17 a. Notice of Motion and Motion of Mineral County for Intervention (Doc. No.
18 2);
 - 19 b. Mineral County's Proposed Petition to Intervene, Memorandum of Points and
20 Authorities, and Supporting Affidavits of Kelvin F. Buchanan, Herman F.
21 Staat, Marlene Bunch, and Louis Thompson (Doc. No. 3);
 - 22 c. Mineral County's Amended Complaint in Intervention (Doc. No. 20);

- 1 d. Amended Memorandum of Points and Authorities in Support of Mineral
- 2 County's Amended Complaint in Intervention (Doc. No. 21); and
- 3 e. Motion for Preliminary Injunction, Memorandum of Points and Authorities,
- 4 Second Affidavit of Kelvin J. Buchanan, and Affidavit of Gary L. Vinyard,
- 5 Ph.D (Doc. No. 22).
- 6

7 Mineral County requests that the Court approve this service package for use by Mineral
8 County in its final Rule 4 service efforts.

9 Mineral County also has attached a Proposed Order Relating to the Completion of
10 Service, which builds on and is consistent with service orders in C-125-C. Consistent with the
11 prior practice and orders governing Mineral County's service efforts in C-125-C, (Doc Nos. 19,
12 48, 327, 542, and 592), and with service orders in C-125-B, the Proposed Order outlines the
13 procedure for obtaining waivers of personal service of notices in lieu of summons by Mineral
14 County, lists the documents Mineral County must serve on proposed defendants, and provides
15 that a schedule for filing responses to Mineral County's Intervention Documents will be set at a
16 later date once Rule 4 service is complete, but that served defendants must enter a Notice of
17 Appearance and Intent to Participate or file a Disclaimer of Interest within thirty (30) days of
18 service if they wish to participate in the case. The Proposed Order also attaches and
19 contemplates the use by proposed defendants of a Joint Motion for Substitution of Parties
20 Following Transfer of Interest and Request for Hearing in the event of a water right transfer after
21 service. Both the Disclaimer of Interest and Joint Motion for Substitution forms were attached to
22 the Court's September 6, 2011 Amended Order Concerning Service Issues Pertaining to
23 Defendants Who Have Been Served (Doc. No. 542). The Proposed Order also contains a
24 provision for filing a Statement Noting Death and procedure for substitution of successors-in-
25 Mineral County Report Concerning Status and Completion of Service
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28 Page 7 of 9

1 interest to deceased defendants which mirrors the provisions contained in the Court's September
2 6, 2011 Amended Order Concerning Service Issues Pertaining to Defendants Who Have Been
3 Served (Doc. No. 542), which was confirmed by the Court's April 23, 2012 Order (Doc. No.
4 592).

5 As in previous orders in C-125-C, the Proposed Order also provides that persons or
6 entities who are served but do not enter appearances are deemed to have notice of future
7 pleadings and orders of the Court. Finally, the Proposed Order contains provisions that mirror
8 the provisions explaining the treatment of successors-in-interest of served defendants which are
9 contained in the Court's September 6, 2011 Amended Order Concerning Service Issues
10 Pertaining to Defendants Who Have Been Served (Doc. No. 542), which was confirmed by the
11 Court's April 23, 2012 Order (Doc. No. 592). The Order includes as attachments all of the
12 Service Package documents attached hereto as Exhibits C-1 through C-7.
13
14

15 **III. SCHEDULE FOR COMPLETION OF SERVICE**

16 Mineral County proposes to complete personal service on the remaining list of 107
17 proposed defendants, attached hereto as Exhibit A, by March 1, 2013, which Mineral County
18 believes is a realistic and feasible date for completion of service, because it provides sufficient
19 time for service by mail, personal service, research concerning successors in interest, and any
20 necessary motions to add and dismiss potential successors-in-interest to those proposed
21 defendants who remain to be served. Mineral County notes, however, that in the event of last
22 minute transfers, it may be necessary to request a limited extension of that deadline in order to
23 track and serve such transferees.
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1 **IV. CONCLUSION**

2 On the basis of the foregoing, Mineral County respectfully requests that the Court issue
3 an order:

- 4 1. Approving the final Rule 4 service list, attached hereto as Exhibit A;
5 2. Approving the current caption, attached hereto as Exhibit B;
6 3. Approving Mineral County's service package, attached hereto as Exhibit C; and
7 4. Approving the deadline for completion of service as outlined above.
8

9 Respectfully submitted this 7th day of June, 2012,

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26 *Attorneys for Mineral County, Nevada*
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2012, I electronically filed the foregoing
**MINERAL COUNTY REPORT CONCERNING STATUS AND COMPLETION OF
SERVICE** with the Clerk of the Court using the CM/ECF system, which will send notification
of such filing to the following via their email addresses:

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and I further certify that I served or caused to have served a true and correct copy of the foregoing **MINERAL COUNTY REPORT CONCERNING STATUS AND COMPLETION OF SERVICE** on the following non-CM/ECF participants by U.S Mail, postage prepaid, this 7th day of June, 2012.

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